

FORCE STRUCTURES

GOVERNANCE

Report by the Clerk of the Police Authority

1. SUMMARY

Appendix 1 contains a briefing note and a discussion paper from the Association of Police Authorities. The briefing note sets out the current thinking on the prospects for governance in light of the police force structures work. The discussion sets out issues relating to accountability below strategic police authority level.

2. RECOMMENDATION

That members consider the contents of the briefing note and discussion paper.

3. DETAIL

The APA briefing note gives useful guidance on governance including the legal position regarding merger and the transition to strategic police authorities. The make-up of shadow strategic police authorities is set out with details of the envisaged appointment process.

The briefing note also reminds members of the “Building Communities, Beating Crime” white paper. It is clear that the APA envisages possible change to police authorities via a Safer Communities Bill. It is not certain when the Safer Communities Bill will be published.

The discussion paper asserts the need for effective governance and accountability arrangements below strategic police authority level. The paper highlights the lack of an accountability mechanism at BCU level and a lack of accountability for partnerships, such as CDRPs. Pilots of different accountability models are currently being evaluated.

Debate on new governance arrangements is ongoing amongst police authorities.

APA Briefing Note

Police Structures Review

Governance Issues

Amalgamations - Legislative and Parliamentary Procedures

1. Under the Police Act 1996 (sections 32- 34), the Home Secretary already has sweeping powers to amalgamate forces and to make appropriate transitional arrangements using secondary legislation (orders). There are two possible approaches which each entail different procedures.

- **Voluntary amalgamations** - the police authorities concerned request the Home Secretary to amalgamate their forces. **NB** Such a request can only be made by police authorities – not forces.

The Home Secretary simply lays an appropriate order before parliament – this order is subject to “negative resolution” – it would not be subject to a debate in either House unless a motion is laid against it by an MP or Peer.

Note: The Home Office letter of 24 October provided a form of words which authorities should use if they wish to follow this approach.

- **Imposed amalgamations:** the Home Secretary can impose an amalgamation if he considers it expedient in the interest of efficiency or effectiveness.

In this case, the Home Secretary has to issue a formal notice setting out the proposed alterations and giving reasons for it to:

- The police authorities concerned;
- All local authorities (county, district, unitary, metropolitan district) in the areas concerned; and
- any other person he considers appropriate.

Each of the above then have a **statutory four month period** in which to make any objections. If any such objections are made, the Home Secretary must then give a further notice saying whether or not he accepts the objections and, if he does not, his reasons.

The Home Secretary can then proceed to make an order for the amalgamations (which may differ from that proposed in the original notice) but these must be subject to “Affirmative Resolution” that is a debate and vote in both Houses of Parliament.

Whilst this approach does mean that there would be parliamentary debate on each and every order for amalgamation, it should be noted that the last time an “affirmative resolution” order was voted down was in 1969.

2. The Home Secretary also has powers to make any necessary transitional provisions including:
 - for membership of any “new/amalgamated” police authority
 - for transfer of property, rights and, liabilities;
 - provision for the transfer of officers and staff;

APA Briefing Note

- provision as to pending legal proceedings.

Transition to Strategic Police Authorities

3. If amalgamations take place by Order under either of the above procedures, a new "Strategic Police Authority" would be set up covering the areas amalgamated and would take over from the previous police authorities on a date specified by the Order. The previous authorities would cease to exist on the same date.
4. Because the Order would be made under the existing legislation (ie the Police Act 1996) the, membership, functions, powers and duties of the new "strategic police authority" would be the same as that of current authorities. *(But please note section on primary legislation at paragraphs 14-16 below).*
5. The membership profile of the authority would be the same as now, i.e. a mix of councillor, independent and magistrate members, and broadly the same numbers. Any change to this membership profile requires primary legislation.

Under section 4, Police Act 1996, the normal size of a police authority would remain as now 17 members - 9 councillors, 5 independents, 3 magistrates. However, the Home Secretary has power to increase the size of an authority by order (to another odd number).

6. The Home Office has indicated that is likely to look sympathetically at requests for slight increases in membership where the new strategic police authorities cover a large number of top tier, i.e. county and unitary, local authorities. Informal, off the record, indications from the Home Office suggest it would be prepared to consider increases to 19 (as is the case for 5 authorities now) or 21 but would not envisage going above 23 (the size of the Metropolitan Police Authority).

Shadow Strategic Police Authorities

7. It is envisaged that, as in 1994 when police authorities were reconstituted in their current form, Shadow Strategic Authorities would be set up, to run in parallel with the existing authorities, until the changeover date.
8. The indications from the Home Office are that, using the powers to make transitional provisions (see paragraph 2 above), there may be scope to appoint members for the new Strategic Authorities drawing from the existing authorities with the precise arrangements set out in the transitional orders. These members would form the Shadow Strategic Authority and probably continue as the new Authority for a transitional period.
9. If that is not the case, it is envisaged membership being determined in the following way:

Councillor Members

All the "relevant" authorities within the new strategic police area would (as now) appoint a Joint Committee to appoint the councillor members. (Relevant Councils are: County Councils, Unitary Councils and Metropolitan Districts: in two-tier areas only county councils are relevant councils, district councils are not). The Joint Committee will (as now) be required to ensure that this reflects the political balance across the whole of the strategic area.

APA Briefing Note

Lay Justices

The councillor members will nominate a panel from amongst their number to participate in the process to select lay justice members in accordance with the Courts Act 2003 and Statutory Instrument 2005 No. 584 – the Police Authorities (Lay Justice Selection Panel) Regulations 2005.

Independent members

The councillor and lay justice members would appoint the independent members of the authority in accordance with Schedules 2 and 3 of the Police Act 1996 and the Police Authorities (Selection Panel) Regulations 1994 (SI 2023/1994) (originally made under the Police and Magistrates' Courts Act 1994) as amended by the Police Authorities (Selection Panel) (Amendment) Regulations 2002 (SI 1282/2002).

10. The above is the subject to clarification and further legal advice, as following the introduction of the provisions of the Courts Act 2003, that the appointment of both lay justice and independent members are dependent on two of the three categories of membership being in place at the outset.

Policy Issues

11. There is currently no police authority that has more relevant authorities than councillor places on the police authority.
12. However, based on the options set out in the annexes to John Giffard's letters to police authorities of 9 November 2005, most authorities would be in a position where they have more relevant councils than councillor places, although this may be mitigated to some extent by increases in size.
13. A key issue is how relevant councils would determine councillor representation when it may not be possible to give every relevant council a place on the new strategic authority. The APA is undertaking some joint work with the LGA on this. Various models including the approach taken to appointments to regional assemblies are being examined. It may be helpful to consider a number of key principles around which membership would be determined, or whether authorities would wish to see an increase in authority membership to maintain the existing position.

Possible Changes to Police Authorities as a result of Primary Legislation

14. The White Paper "*Building Communities, Beating Crime*" put forward proposals for possible changes to police authorities including to both membership and functions. This included proposals to remove magistrates as a separate category of membership and providing a more prominent role for Local Authority Community Safety Portfolio holders.
15. The Home Office still hopes to secure a slot for a Safer Communities Bill in the current session. At the earliest this would not be introduced before January 2006 but could be enacted by July or more likely October 2006.
16. Until the Bill is published, it will not be known if the Home Office will choose to still enact the proposals around police authority membership and functions as set out in the White Paper or whether a more radical alternative approach may be adopted. Certainly, it is possible that the Home Office may wish to take the opportunity to provide enabling powers to alter the composition and/or role of "Strategic Police Authorities" or indeed to make provision for a new type of governance body at the strategic level with a different composition and/or functions.

APA Briefing Note

APA Secretariat
November 2005

APA Briefing Note

Closing the (Accountability) Gap A Discussion Paper

Accountability Below Strategic Police Authority Level

The APA Plenary on 19 October agreed that there would be a need to ensure that there are effective governance and accountability arrangements below strategic police authority following any restructuring. This level is critical in maintaining connectivity between local neighbourhoods and a strategic police authority that is likely to span a number of metropolitan districts and counties, hundreds of miles of territory and several million people.

The APA recognised that even under the current structures this was an issue and the APA's *Accountability in Action* pilots launched in November 2004 in 12 areas, are testing out different local models and approaches. An independent evaluation of a selection of the pilots is underway and will report shortly.

A number of models for accountability at this level have been devised and are being actively considered by local police authorities. Considerable work at national level is also being undertaken by the APA, including joint work with the LGA.

Identifying the Gap

The APA has strongly supported the development and implementation of neighbourhood policing, and considers that this agenda is of the highest priority in the current police reform programme.

However, restructuring of police forces and authorities could undermine the successful delivery of neighbourhood policing if there is no direct connection between local communities and the strategic bodies charged with decision making around strategic priorities, budgets and resource allocation.

It is this disconnect that we wish to avoid through the introduction of an accountability structure that mirrors that of service delivery. The Home Secretary has spoken of the four tiers of policing, neighbourhood level, BCU level, force level and national level. Currently there are accountability mechanisms in place or planned for each of these levels with the exception of the BCU.

Just as there is an identifiable accountability gap at BCU level, there is also a similar gap in relation to the decision-making carried out in partnership fora. In practice many CDRPs are generally officer based, except for police authority representatives. Similarly LCJBs are entirely officer led. Whilst these may prove effective delivery bodies, there is a critical lack of democratic oversight and accountability to the "parent" bodies, despite significant public funds being channelled through these bodies.

Filling the Gap

Whilst the experience of Northern Ireland and a number of pilots indicates that there is considerable merit in a body that oversees police activity at BCU level, it would appear that there are significant additional benefits that could be derived from broadening its scope to incorporate the full range of partnership activity directed towards delivering community safety within a given area.

APA Briefing Note

There is a danger that such a body could be seen to be adding to the plethora of local groups with an interest in community safety. However, a body constituted at Member level with representation across all relevant authorities under the Crime and Disorder Act would complement some existing groups, whilst making others that currently operate in isolation redundant. By bringing together those who are accountable for the delivery of community safety public services will be obliged to more effectively tackle what are currently perceived to be complex cross-cutting problems.

The purpose of such a body would be to bring together stakeholders at BCU level with responsibility for performance oversight and developing community engagement and consultation at neighbourhood level.

Introducing a body at BCU or CDRP level does not require primary legislation. However, if such a body is to have delegated powers Section 107(4) of the Local Government Act 1972 would have to be amended or repealed.

There is currently no legislation that would prevent an authority from establishing a sub-structure by area at any level eg at County level. However, it is likely that there would be resistance on the part of the Home Office to what would be seen as an additional bureaucratic tier. However, there is no reason why strategic police authorities could not put in place arrangements at an intermediate or county level with an ACPO rank officer regularly meeting with BCU community safety structures and possibly lead/link councillor and police authority members. This would remain the case if the proposed Safer Communities Bill legislated for a sub-structure at BCU/CDRP level.

**APA Secretariat
November 2004**